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From:

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To:

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Subject: 6501(c)(9) Question

The discussion below answers your question.

Section 6501(c)(9) provides an exception to the general 3-year assessment limitations period. Under section 6501(c)(9), if the value of gifted property is required to be shown on a gift tax return (return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code) but is not shown on the return, then any gift tax on the transfer of gifted property may be assessed at any time. The unlimited assessment period does not apply if the gift was disclosed on the return in a "manner adequate to apprise the Secretary of the nature of such item."

The Treasury regulations promulgated under section 6501(c)(9) provide that if a gift is not "adequately disclosed" on a gift tax return, then the tax imposed on that gift may be assessed at any time. Treas. Reg. § 301.6501(c)-1(f). A gift will be adequately disclosed if the gift tax return provides, inter alia, the following information:

1. A description of the transferred property;
2. The identity of, and relationship between, the transferor and each transferee;
3. A detailed description of the method used to determine the fair market value of the property transferred, including any financial data used in determining the value of the interest, any restrictions on the transferred property considered in determining the fair market value of the property, and a description of any discounts claimed in valuing the property. In the case of a transfer of an interest in an entity that is not actively traded, a description must be provided of any discount claimed in valuing the interest in the entity or any assets owned by such entity. Treas. Reg. § 301.6501(c)-1(f)(iv).

The adequate disclosure requirements may also be met if the donor submits an appraisal of the transferred property that meets the requirements set forth in § 301.6501(c)-1(f)(3).

The period of limitations on assessment of gift tax with respect to a gift will commence to run only if the donor submits information required under the regulations. Rev. Proc. 2000-34, 2000-2 C.B. 186.

You indicated that a donor of stock of a closely-held business failed to disclose on the gift tax return: (1) any information with respect to the method used to determine the FMV of the stock; and (2) any description of discounts used to value the stock when discounts were in fact used to value the stock. Based on these basic facts, it appears that the gift tax imposed on the stock transfer may be assessed at any time under section 6501(c)(9).

Please note that gifts subject to the special valuation rules in sections 2701 or 2702, or any taxable event described in § 25.2701-4, must be “adequately shown” on the gift tax return under § 301.6501(c)-1(e) for the period of limitations on assessment to begin to run. While the “adequately shown” standard in § 301.6501(c)-1(e) may differ somewhat from the adequate disclosure standard of § 301.6501(c)-1(f), the § 301.6501(c)-1(e) regulations imposes similar disclosure requirements with respect to the particular method the donor used for gift valuation purposes. § 301.6501(c)-1(e) provides that the gift tax return to provide a “detailed description (including all actuarial factors and discount rates used) of the method used to determine the amount of the gift arising from the transfer (or taxable event), including, in the case of an equity interest that is not actively traded, the financial and other data used in determining value. Financial data should generally include balance sheets and statements of net earnings, operating results, and dividends paid for each of the 5 years immediately before the valuation date.”

If you need additional assistance, please feel free to contact me.